IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18-6-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.NPD No.1417 of 2006

P.Sakthivel .. Petitioner/Plaintiff

vs

Ponnusamy .. Respondent/Defendant

Civil revision petition preferred under Article 227 of the Constitution of India against the fair and decretal order dated 3.7.2006 made in I.A.No.840 of 2005 in CFR No.5171 of 2005 (11.11.2005) on the file of the District Munsif, Sathyamangalam.

For Petitioner : Mr.N.Manokaran
For Respondent : Mr.P.Thangavel

ORDER

An order of dismissal of an application by the District Munsif, Sathyamangalam, made in I.A.No.840 of 2005 to condone the delay of 258 days in making re-presentation of the plaint, is the subject matter of challenge before this Court.

2.The Court heard the learned Counsel on either side.

3.It was a suit for recovery of money filed by the revision petitioner-plaintiff. The Court fee was Rs.7,500.50. The plaint was presented on 10.2.2005 with the Court fee of Rs.10/-, and the deficit Court fee is to be paid. The plaintiff was returned on 11.2.2005 stipulating two weeks time for payment of rest of the Court fee, but not done so. Subsequently, the plaint was re-presented on 11.11.2005 along with an application to condone the delay of 258 days in making the payment of the Court fee. The said application was dismissed. Hence, this revision has been brought forth by the plaintiff.

4.The learned Counsel for the plaintiff would submit that it is true that the application was not filed within the period of two weeks' time; that the Court fee has also not been paid; but, the Court was not powerless; that under Sec.151 of CPC, the application was filed; and that under the circumstances, the delay should have been condoned by the lower Court in exercise of its inherent powers under Sec.151 of CPC.

https://hcservices.ecourts.gov.in/hcservices/

5.The Court heard the learned Counsel for the respondent on the above contentions.

6.After careful consideration of the rival submissions made, this Court is unable to countenance the contentions put forth by the learned Counsel for the revision petitioner. It was a case where the total Court fee was Rs.7,500.50. The plaint was filed on 10.2.2005, and the same was returned on the next day giving two weeks' time for payment of the Court fee of Rs.7,490.50. It is pertinent to point out that not even any part of the court fee was paid; but, the plaint was in the hands of the plaintiff, and the same was re-presented on 11.11.2005 along with an application to condone the delay of 258 days. Now, at this juncture, it is to be pointed out that once there was a deficit Court fee found, and it was directed to be paid within the stipulated time, and if not done, the only procedure possible under the CPC is to seek extension of time for payment of the deficit Court fee as required under Sec.149 of the Code. But, in the instant case, no application was filed in time; but, it was kept pending, and there was a delay of 258 days in making an application after the said period, under Sec.151 of CPC. This Court is of the considered opinion that so long as the application as contemplated under Sec.149 of CPC has not been filed and that too within the stipulated time, no question of condoning such a delay at this stage would arise. It is true that an application could be filed under Sec.151 of CPC. But, at the same time, the application should have been made in time and not out of time. Neither Sec.149 of CPC nor Sec.151 of CPC could be applied in such a case where the procedure what is contemplated under the Code of Civil Procedure is not complied with in respect of the Court fee. Hence, the lower Court was perfectly correct in dismissing the application. The order of the lower Court is sustained. However, there is no impediment for the petitioner to apply to the Court to get back the Court fee already paid. The lower Court will consider the request of the petitioner in accordance with law.

7.In the result, this civil revision petition is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

nsv/

To:

The District Munsif
Sathyamangalam

1 cc To Mr.N.Manokaran, Advocate, SR.35603.

CRP NPD No.1417 of 2006

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

TEJ(CO)
RVL 25.06.2007